

## SENATE BILL NO. 474

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING CERTAIN ACTS OR PRACTICES OF INSURERS WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIRS, AUTOMOTIVE GLASS PRODUCTS, AND AUTOMOBILE REPAIRS; ALLOWING INSURERS TO INFORM INSURED PERSONS AND CLAIMANTS ABOUT REPAIR OPTIONS AND PROGRAMS AVAILABLE UNDER THE INSURANCE POLICY; PROVIDING THAT AN INSURED PERSON OR CLAIMANT HAS THE RIGHT TO CHOOSE THE BUSINESS OR LOCATION FOR AUTOMOBILE GLASS REPLACEMENT OR REPAIRS, PURCHASE OF AUTOMOBILE GLASS PRODUCTS, OR AUTOMOBILE REPAIRS; REQUIRING THAT THE INSURED PERSON OR CLAIMANT BE INFORMED OF THE RIGHT TO CHOOSE; RESTRICTING THE DISTRIBUTION OF PROPRIETARY PRICING INFORMATION; PROVIDING FOR A GRIEVANCE PROCEDURE~~ GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE BODY REPAIR; AMENDING SECTIONS 30-14-225 AND 33-18-222, MCA; REPEALING SECTIONS 33-18-221, 33-18-223, 33-18-224, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Prohibited acts or practices of insurers -- right to choose repair business or location -- liability -- proprietary pricing information -- grievances and remedies.~~ (1) An insurer, including its producers, designated administrators, adjusters, and employees, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

~~(a) require a person insured or a claimant under the policy to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of automobile glass products, or automobile repair services; or~~

~~(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or a claimant or provide an incentive or inducement for an insured person or a claimant to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of~~

1 ~~automobile glass products, or automobile repair services.~~

2 ~~——— (2) For the purposes of subsection (1), the following are not acts or practices that intimidate,~~  
3 ~~coerce, or threaten an insured person or a claimant or that provide an incentive or inducement:~~

4 ~~——— (a) providing an insured person or a claimant with information about particular businesses or~~  
5 ~~locations that provide automobile glass replacement, automobile glass repair services, automobile glass~~  
6 ~~products, or automobile repair services with which the insurer or its designated administrator has~~  
7 ~~established a business relationship;~~

8 ~~——— (b) providing an insured person or a claimant with a list of all established businesses or locations~~  
9 ~~that provide automobile glass replacement, automobile glass repair services, automobile glass products,~~  
10 ~~or automobile repair services, that are reasonably close to the insured person or claimant, and that offer~~  
11 ~~a warranty for the services or products provided by the businesses or locations;~~

12 ~~——— (c) providing an insured person or a claimant with a list of particular businesses or locations that~~  
13 ~~provide automobile glass replacement, automobile glass repair services, automobile glass products, or~~  
14 ~~automobile repair services that are reasonably close to the insured person or claimant. The insurer or its~~  
15 ~~designated administrator may restrict the list to those businesses or locations that meet or have agreed~~  
16 ~~to the insurer's or designated administrator's reasonable standards of quality, service, safety, and price.~~  
17 ~~If the restricted list is provided, the insurer or its designated administrator shall inform the insured person~~  
18 ~~or claimant of the insured person's or claimant's right to use a nonlisted company or location as provided~~  
19 ~~in subsection (3).~~

20 ~~——— (d) providing an insured person or a claimant with information about repair options made available~~  
21 ~~by an insurer or its designated administrator to an insured person or claimant under an insured person's~~  
22 ~~policy;~~

23 ~~——— (e) describing the process by which the claim of an insured person or claimant would be adjusted~~  
24 ~~and paid; or~~

25 ~~——— (f) referring to a warranty issued by the insurer, its designated administrator, or a business or~~  
26 ~~location that provides automobile glass replacement, glass repair services, glass products, or automobile~~  
27 ~~repair services.~~

28 ~~——— (3) The insured person or claimant may use a nonlisted company or location at the insured~~  
29 ~~person's or claimant's sole discretion and subject to the provisions of subsection (4). The insurer or its~~  
30 ~~designated administrator shall promptly pay for the cost of automobile glass replacement, automobile glass~~

1 ~~repair services, automobile glass products, or automobile repair services provided, less any deductible~~  
2 ~~under the terms of the policy.~~

3 ~~———(4) This section does not require an insurer or its designated administrator to pay more for~~  
4 ~~automobile glass replacement, automobile glass repair services, automobile glass products, or automobile~~  
5 ~~repair services than the prevailing market price as defined in 33-18-222.~~

6 ~~———(5) Notwithstanding the provisions of subsections (1) through (4), an insurer or its designated~~  
7 ~~administrator may agree to pay the full cost of automobile glass replacement, automobile glass repairs,~~  
8 ~~automobile glass products, or automobile repairs.~~

9 ~~———(6) It is unlawful for a business or location that provides automobile glass replacement, automobile~~  
10 ~~glass repair services, automobile glass products, or automobile repair services to charge or agree to charge~~  
11 ~~an insured person or claimant more than an uninsured person for any automobile glass replacement,~~  
12 ~~automobile glass repair services, automobile glass product, or automobile repair services.~~

13 ~~———(7) An insurer or its designated administrator that contracts with an independent adjuster may not~~  
14 ~~be held liable for the independent adjuster's failure to comply with the terms of this section unless the~~  
15 ~~independent adjuster is clearly acting at the direction of the insurer or its designated administrator.~~

16 ~~———(8) If the insured person or claimant uses a business or location for automobile glass replacement,~~  
17 ~~automobile glass repair services, automobile glass products, or automobile repair services with which the~~  
18 ~~insurer or its designated administrator does not have an established business relationship under subsection~~  
19 ~~(2)(a) or that is not on a list provided under subsection (2)(b) or (2)(c), the insurer or its designated~~  
20 ~~administrator may not be held liable for any services performed or products provided by the business or~~  
21 ~~location that the insured person or claimant chooses to use.~~

22 ~~———(9) An insurer or its designated administrator that through the processing of repair bills obtains~~  
23 ~~proprietary pricing information about an insurer or a business or location that provides automobile glass~~  
24 ~~replacement, automobile glass repair services, automobile glass products, or automobile repair services~~  
25 ~~may not disclose the proprietary pricing information obtained to any other insurer, designated~~  
26 ~~administrator, or business or location that provides automobile glass replacement, automobile glass repair~~  
27 ~~services, automobile glass products, or automobile repair services, except as is reasonably necessary to~~  
28 ~~process a claim. ———~~

29 ~~———(10) In the event of any dispute concerning a provision of this section, the aggrieved person may~~  
30 ~~submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33;~~

1 chapter 1, part 7.

2

3 ~~Section 2.~~ Section 30-14-225, MCA, is amended to read:

4 ~~"30-14-225. Prohibited practices -- advertising allowed -- violations.~~ (1) A person engaged in  
5 automobile repair or the sale, repair, or replacement of automobile glass or in the business of automobile  
6 repair may not:

7 ~~(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an~~  
8 ~~insurance deductible under a casualty or property insurance policy, including any incentive to purchase~~  
9 ~~automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with~~  
10 ~~the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or~~

11 ~~(b) pay a sum or incentive to an individual or entity for directing automobile repair services or~~  
12 ~~automobile glass replacement or repair or the purchase of a glass product.~~

13 ~~(2) A person or association of persons engaged in automobile repair services or the sale, repair,~~  
14 ~~or replacement of automobile glass may advertise services as to quality, service, and safety.~~

15 ~~(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage,~~  
16 ~~handle, or arrange automobile glass replacement or glass repair work or automobile repair services for~~  
17 ~~which the glass broker or the automobile repair business retains a percentage of the claim.~~

18 ~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured~~  
19 ~~regarding an insurance claim, the insurer may not:~~

20 ~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business~~  
21 ~~or location; or~~

22 ~~(b) mention or provide the name of a particular automobile repair business or location.~~

23 ~~(5)(3) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.~~

24 ~~(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of~~  
25 ~~automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions~~  
26 ~~of Title 33, chapter 1, part 12."~~

27

28 ~~Section 3.~~ Section 33-18-222, MCA, is amended to read:

29 ~~"33-18-222. Prevailing market price.~~ For purposes of 33-18-221, 33-18-223, and 33-18-224  
30 ~~[section 1], "prevailing market price" means the lowest competitive and generally accepted market price~~

1 in a local area. The prevailing market price may not be less than cost as provided in 30-14-209."

2  
3 ~~NEW SECTION. Section 4. Repealer. Sections 33-18-221, 33-18-223, 33-18-224, and~~  
4 ~~33-18-1006, MCA, are repealed.~~

5  
6 ~~NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an~~  
7 ~~integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to~~  
8 ~~[section 1].~~

9  
10 **SECTION 1. SECTION 30-14-225, MCA, IS AMENDED TO READ:**

11 **"30-14-225. Prohibited practices -- advertising allowed -- violations.** (1) A person engaged in  
12 ~~automobile repair or the sale, repair, or replacement of automobile glass or in the business of automobile~~  
13 ~~repair OR IN THE BUSINESS OF AUTOMOBILE REPAIR~~ may not:

14 (a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an  
15 insurance deductible under a casualty or property insurance policy, including any incentive to purchase  
16 automobile glass ~~or automobile repairs~~ OR AUTOMOBILE REPAIRS offered to the customer in which the  
17 customer, in conjunction with the purchase of automobile glass ~~or automobile repairs~~ OR AUTOMOBILE  
18 REPAIRS, receives cash or other valuable consideration; or

19 (b) pay a sum or incentive to an individual or entity for directing ~~automobile repair services or glass~~  
20 replacement or repair or the purchase of a glass product.

21 (2) A person or association of persons engaged in ~~automobile repair services or the sale, repair,~~  
22 ~~or replacement of automobile glass may advertise services as to quality, service, and safety.~~

23 (3) A glass broker, as defined in 33-18-223, ~~or an automobile repair business~~ may not manage,  
24 handle, or arrange automobile glass replacement or glass repair work ~~or automobile repair services~~ for  
25 which the glass broker ~~or the automobile repair business~~ retains a percentage of the claim.

26 ~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured~~  
27 ~~regarding an insurance claim, the insurer may not:~~

28 ~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business~~  
29 ~~or location; or~~

30 ~~(b) mention or provide the name of a particular automobile repair business or location.~~

(5)(4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ OR IN THE BUSINESS OF AUTOMOBILE REPAIR who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

**SECTION 2. SECTION 33-18-221, MCA, IS AMENDED TO READ:**

**"33-18-221. Designation of specific repair shops and discrimination against insured customers prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may

1 agree to pay the full cost of glass replacement or repair.

2 ~~(5) It is unlawful for a company or location that provides automobile glass replacement services~~  
3 ~~to charge or agree to charge an insured customer more than an uninsured customer for any automobile~~  
4 ~~glass replacement service."~~

5

6 **SECTION 3. SECTION 33-18-222, MCA, IS AMENDED TO READ:**

7 **"33-18-222. Prevailing Lowest prevailing market price.** For purposes of 33-18-221, and  
8 33-18-223, and 33-18-224, "prevailing market price" "lowest prevailing market price" means the lowest  
9 ~~competitive and generally accepted~~ market price in a local area. The LOWEST prevailing market price may  
10 not be less than cost as provided in 30-14-209."

11

12 **SECTION 4. SECTION 33-18-223, MCA, IS AMENDED TO READ:**

13 **"33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance  
14 company, individually or with others, to directly or indirectly:

15 (a) establish an agreement with any person to act as a glass broker for the insurance company  
16 under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing  
17 glass replacement or glass repair work for the insurance company;

18 (b) establish an agreement with a glass broker that requires a glass repair shop to bill through that  
19 glass broker as a condition of doing glass replacement or glass repair work; or

20 (c) establish a price that must be met by a glass repair shop as a condition for doing glass  
21 replacement or glass repair work that is below the LOWEST prevailing market price as provided in  
22 33-18-222;

23 ~~(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity~~  
24 ~~that has a financial interest in an entity in this state that installs or provides glass for installation; or~~

25 ~~—— (e) share information obtained through the processing of glass replacement or glass repair bills~~  
26 ~~with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement,~~  
27 ~~or repair business.~~

28 (2) As used in this section, "glass broker" means an automobile glass company that acts as a  
29 third-party agent for the insurer whenever the glass broker enters into agreements with other automobile  
30 glass dealers to perform glass replacement or glass repair work ~~or that installs or manufactures glass or~~

1 provides glass for installation."

2

3 **SECTION 5. SECTION 33-18-224, MCA, IS AMENDED TO READ:**

4 **"33-18-224. Designation of specific automobile body repair shops prohibited ~~---certain~~**  
 5 **~~requirements---allowances.~~** (1) An insurance company, including its ~~employees~~ producers and adjusters,  
 6 that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may  
 7 not:

8 (a) ~~require or encourage~~ that a person insured ~~or a claimant~~ under the policy ~~to~~ use a particular  
 9 automobile body repair business or location; or

10 (b) engage in any act or practice that intimidates, coerces, or threatens an insured person ~~or a~~  
 11 ~~claimant~~ or that provides an incentive or inducement for an insured person ~~or a claimant~~ to use a particular  
 12 automobile body repair business or location; ;

13 ~~(c) except as provided in subsection (2):~~

14 ~~----- (i) suggest the use of a particular automobile repair business or location;~~

15 ~~----- (ii) mention or provide the name of a particular automobile repair business or location;~~

16 ~~----- (iii) direct an insured or claimant to an automobile repair business or location or entity in Montana~~  
 17 ~~that engages in or has a financial interest in the processing of a claim or bill unless the business or location~~  
 18 ~~has been selected by the insured or claimant; or~~

19 ~~----- (iv) share information obtained through the processing of an automobile repair bill with an entity~~  
 20 ~~that is involved directly or indirectly in any aspect of the automobile repair business; or~~

21 ~~----- (d) suggest or direct its appointed producers to suggest, mention, provide the name of, or~~  
 22 ~~encourage the use of a particular automobile repair business or location to an insured person or a claimant.~~

23 ~~----- (2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and~~

24 ~~----- (b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:~~

25 ~~----- (i) write automobile insurance for primarily one insurer; or~~

26 ~~----- (ii) are contractually obligated to use one automobile insurer before using other insurers.~~

27 ~~(3)(2) An insurer may~~ For the purposes of this section, an incentive or inducement does not  
 28 include:

29 (a) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of all established  
 30 automobile body repair businesses or locations reasonably close to the insured person or ~~claimant~~ customer



that offer a warranty for the automobile body repair services provided by the businesses or locations; ~~or~~

(b) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of particular ~~automobile~~ repair businesses or locations that are reasonably close to the insured person or claimant that meet body repair shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile ~~body~~ repair business or location.

~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:~~

~~—— (a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.~~

~~—— (b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.~~

~~—— (5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.~~

~~—— (6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.~~

~~(7)(3) The insured may use a business or location at the insured's or claimant's sole discretion. The, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222. An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.~~

~~(8)(4) If the insured person or claimant uses an automobile body repair business or location not on a list provided under subsection (3)(a) or (3)(b) (2)(a) or (2)(b), the insurance company may not be held~~

1 liable for any repair work performed by the automobile ~~body~~ repair business or location that the insured  
2 person chooses to use.

3 ~~(9)(5)~~ It is unlawful for an automobile ~~body~~ repair business or location to charge or agree to charge  
4 an insured customer more than an uninsured customer for any automobile ~~body~~ repair service.

5 ~~(10)(6)~~ An insurance company that contracts with an independent adjuster may not be held liable  
6 for the independent adjuster's failure to comply with the terms of this section ~~unless the independent~~  
7 ~~adjuster is clearly acting at the direction of the insurance company.~~

8 ~~(11)(7)~~ For purposes of this section, "automobile ~~body~~ repair business or location" does not  
9 include a business or location that exclusively provides automobile glass replacement, glass repair services,  
10 or glass products."

11

12 **SECTION 6.** SECTION 33-18-1006, MCA, IS AMENDED TO READ:

13 **"33-18-1006. Desist orders for prohibited practices ~~--court injunctions.~~** ~~(1)~~ Violations of  
14 33-18-221 through ~~33-18-224~~ 33-18-223 are subject to cease and desist orders of the commissioner  
15 issued under 33-18-1004.

16 ~~(2) The commissioner, the attorney general, or a county attorney of the county where a violation~~  
17 ~~of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of~~  
18 ~~33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged~~  
19 ~~to have occurred."~~

20

21 **NEW SECTION.** **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are  
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
23 applications, the part remains in effect in all valid applications that are severable from the invalid  
24 applications.

25

26 **NEW SECTION.** **Section 8. Effective date.** [This act] is effective on passage and approval.

27

28 **NEW SECTION.** **Section 9. Retroactive applicability.** [This act] applies retroactively, within the  
29 meaning of 1-2-109, to ~~January 1, 2000~~ OCTOBER 1, 1999.

30

- END -